S.B.CIVIL WRIT PETITION NO.4744/2004

Dr.Sharda Bhandari
v.
State of Rajasthan & Ors.

Date of Order :: 28th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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Under a memorandum dated 23.6.1994 the petitioner was subjected to an inquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") for an allegation of misconduct to the effect that she remained voluntarily absent from duties from 8.2.1984 to 19.6.1987, while working as Medical Officer, Mahatma Gandhi Hospital, Banswara and also disobeyed the orders of her higher authorities by wilfully remaining absent from duties from 27.6.1987 to 23.2.1992, while posted at Referral Hospital, Kushalgarh in District Banswara. The disciplinary authority by order dated 18.10.2000 exonerated the petitioner from the allegations of misconduct with an instruction to remain vigilant in future. The disciplinary authority also ordered to treat the period commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992 as the period in that the petitioner remained awaiting posting orders and declared her entitled for all consequential benefits

including continuity in service for the period concerned. The Deputy Secretary to the Government of Rajasthan by an order dated 10.3.2003 ordered to treat the period commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992 as the period under leave without pay and also declared the period aforesaid not to be computed for determination of pension and for grant of annual grade increments. Beside the period above the term commencing from 1.4.1984 to 7.1.1986 and 27.6.1987 to 14.5.1990 was also ordered to be treated as non working period. Being aggrieved by the same this petition for writ is preferred.

Counsel for the petitioner at the threshold stated for not pressing the clauses No.V and VI of prayer that pertain to examination of validity of Rule 20 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as “the Rules of 1996”).

No reply to the writ petition has been filed on behalf of the respondents, however, looking to petty nature of the controversy involved this petition for writ is heard finally with consent of the parties.

It is the position admitted between the parties that by order dated 18.10.2000 the disciplinary authority treated the term commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992 as the period in which the petitioner remained

awaiting posting order and she was allowed to all consequential benefits for the period concerned. In view of the order dated 18.10.2000 the petitioner is entitled for entire salary of the period referred above and that period for all purpose is required to be taken into consideration as a part of service tenure of the petitioner.

The Deputy Secretary to the Government of Rajasthan, Department of Medical & Health Services Group-II, Jaipur by order dated 10.3.2003 has declared the period referred above as leave without pay, meaning thereby that for all purposes the aforesaid period shall not be taken into consideration as part of service tenure of the petitioner. The disciplinary authority once treated that period as part of service of the petitioner, it was not open for the officer concern to alter the decision already taken. As a matter of fact the order passed by the Deputy Secretary is running contrary to the order passed by the disciplinary authority on 18.10.2000. As such the order Anx.18 dated 10.3.2003 to the extent it relates to treat the period commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992 as leave without pay is illegal.

It is also contended by counsel for the petitioner that the respondents have not released the annual grade increments to the petitioner for the

period disputed i.e. commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992. According to the petitioner the respondents have also not made fixation of the petitioner's pay in revised pay scales as required to be made w.e.f. 1.9.1986, 1.9.1988 and 1.9.1996. I do not find any just and valid reason available with the respondents for not making such revisions of pay scales and also for not granting the annual grade increments for the period commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992.

In view of whatever discussed above this petition for writ deserves acceptance and, therefore, the same is allowed. The respondents are directed to consider the period commencing from 8.1.1986 to 19.6.1987 and 15.5.1990 to 23.2.1992 as a part of service tenure of the petitioner. She is declared entitled for getting all consequential benefits for the period referred above including the salary and increments in accordance with law. The petitioner is also declared entitled for revision of pay scales as and when made by the respondents by revising the pay scales concerned. The respondents are directed to comply with the directions given by this Court within a period of four months from today.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.